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Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		Hearing Date: January 31, 2011 10:00 a.m.
In re:	:	Chapter 11
BRUNSCHWIG & FILS, INC.,	:	Case No. 11-22036 (RDD)
Debtor.	:	

LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR'S MOTION FOR ORDERS (I) SCHEDULING HEARING TO CONSIDER (A) SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, SUBJECT TO HIGHER AND BETTER OFFERS; AND (B) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; (II) SCHEDULING HEARING TO CONSIDER APPROVAL OF (A) BREAK-UP FEE/EXPENSE REIMBURSEMENT AND (B) BIDDING PROCEDURES FOR THE CONDUCT OF AN AUCTION AND ENTERING ORDER THEREON; (III) FIXING A CURE CLAIMS BAR DATE WITH RESPECT TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; AND (IV) FIXING MANNER AND NOTICE OF SALE HEARING; (V) AUTHORIZING THE DEBTOR TO SELL ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, SUBJECT TO HIGHER AND BETTER OFFERS; AND (VI) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

The Official Committee of Unsecured Creditors (the "Committee") in the above-captioned Chapter 11 case of Brunschwig & Fils, Inc. (the "Debtor"), by and through its proposed counsel, Klestadt & Winters, LLP, as and for its limited objection to the Debtor's *Motion for Orders (I) Scheduling Hearing to Consider (A) Sale of Substantially All of the Debtor's Assets, Free and Clear of All Liens, Claims and Encumbrances,* *Subject to Higher and Better Offers; and (B) Assumption and Assignment of Executory Contracts; (II) Scheduling Hearing to Consider Approval of (A) Break-Up Fee/Expense Reimbursement and (B) Bidding Procedures for the Conduct Of An Auction And Entering Order Thereon; (III) Fixing a Cure Claims Bar Date with Respect to the Assumption and Assignment of Executory Contracts; and (IV) Fixing Manner and Notice of Sale Hearing; (V) Authorizing the Debtor to Sell Assets, Free and Clear of All Liens, Claims and Encumbrances, Subject to Higher and Better Offers; and (VI) Authorizing Assumption and Assignment of Executory Contracts* (the "Sale Motion")[1][Docket No. 8], respectfully sets forth as follows:

BACKGROUND

1. On January 12, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Title 11 of Chapter 11 of the United States Code (the "Bankruptcy Code").

2. On the Petition Date, the Debtor filed various First-Day motions including the (the "Sale Motion").

3. On January 24, 2011, Cohen Brothers Realty Corporation filed an objection to the Sale Motion (the "Cohen Objection").

4. On January 26, 2011, ADAC, L.P. filed an objection to the Sale Motion (the ("ADAC Objection").

5. On January 27, 2011, the Office of the United States Trustee appointed the five-member Official Committee of Unsecured Creditors composed of: (i) ADAC, LP,

[1] Capitalized terms, not otherwise defined herein, shall have the meanings ascribed to them in the Sale Motion.

(ii) D&D Building Company, LLC, c/o Cohen Brothers Realty Corp., (iii) Michigan Design Center Limited Partnership, (iv) Tissus D'Avesnieres, and (v) United Parcel Service.

6. On January 27, 2011, the Committee selected Klestadt & Winters, LLP as its counsel, subject to the approval of this Court.

LIMITED OBJECTION

7. The Sale Motion and Bidding Procedures provide for a so-called Break-Up Fee/Expense Reimbursement of $325,000 payable to the Purchaser if Purchaser is not the Successful Bidder at the Auction.

8. The Committee objects to the inclusion of this provision in the Bidding Procedures.

9. The Amended Guidelines for the Conduct of Assets Sales (the "Guidelines"), as established by the United States Bankruptcy Court for the Southern District of New York, provides as follows with respect to provisions awarding so-called Break-Up Fees:

> The propriety of any break-up or topping fees and other bidding protections (such as the estate's proposed payment of out-of-pocket expenses incurred by a bidder in connection with the proposed transaction or the compensation of a bidder for lost opportunity costs) will be determined on a case-by-case basis. Generally such obligations should be payable only from the proceeds of a higher or better transaction entered into with a third party within a reasonable time of the closing of the sale. Such provisions must be set forth with particularity, and conspicuously disclosed in the motion.

10. Therefore, while this Court has approved break-up fee provisions, in accordance with this Court's guidelines, the determination of whether such provisions are appropriate must be made on a case-by-case basis. When these provisions are approved,

the approved amounts usually range from 1% to 5% of the total purchase price depending on a number of different factors.

11. Here, the Debtor’s proposed Break-Up Fee/Expense Reimbursement is equal to 5% of the Purchase Price -- the high end of this sliding scale -- yet there is little explanation as to why such an amount is warranted. The Committee recognizes that this provision, and amount, combines what are typically two provisions designed to compensate a stalking horse bidder for its time and effort in addition to its expenses, in the event that the stalking horse bidder does not wind-up purchasing the assets.

12. However, it is unclear from the Sale Motion what percentage of the stated amount -- $325,000 -- will cover expenses and what will constitute a break-up fee.

13. While details of the arrangement remain scant at this point in the case, paragraph 27 of the Sale Motion indicates that the Debtor’s principal will have a role with the new company once the sale to Purchaser closes.

14. Given the nature and breadth of knowledge the Debtor’s principal brings to the due diligence process and his understandable motivations to see the new enterprise work, the Committee submits that a heightened reward to the Purchaser for submitting a stalking horse bid is inappropriate.

15. The Committee does not necessarily object to the reimbursement of the Purchaser’s reasonable out-of-pocket expenses in preparing its stalking horse bid. However, the Committee believes a break-up fee under these circumstances, unless there are additional facts not set forth on the Sale Motion or its accompanying documents to support the same, should not be approved by the Court.

16. While the Committee has had some discussions with counsel to the Debtor and counsel to the Purchaser, the Committee was unable to resolve this issue to its satisfaction in the one full business day it had to address them.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order (i) denying the Bidding Procedures portion of the Sale Motion unless the Bidding Procedures are modified as set forth herein; and (ii) granting such other relief as the Court deems just and proper.

Dated: New York, New York
January 30, 2011

Respectfully submitted,

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